

Nos. 14-71004, 14-71202, and 14-70771

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Ralphs Grocery Company,
Petitioner,

V.

National Labor Relations Board,
Respondent.

Petition for Review of a Decision and Order
of the National Labor Relations Board
Case Nos. 31-CA-27160, 31-CA-27475, and 31-CA-27685

Ralphs' Motion to Exceed the Page Limit

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Ralphs respectfully moves this Court, pursuant to Circuit Rule 32-2, for entry of an Order permitting it to exceed the page and type-volume limitations of the Courts order dated August 17, 2016 requesting that the parties submit simultaneous letter briefs not to exceed three pages addressing the holding of *Consumer Financial Protection Bureau v. Gordon*, 819 F.3d 1179 (9th Cir. 2016). A true and correct copy of the proposed oversized brief, which contains 1,361 words, and the supporting declaration of Timothy F. Ryan are submitted herewith.

The showing of substantial need and diligence required under Ninth Circuit Rule (NCR) 32-2 is satisfied here. Ralphs originally submitted a three page letter brief on September 16, 2016, the deadline for submission as required by the order. The font size of the letter was 12 points in the body of the letter, and 10 points in the footnotes; these are the default settings for drafting documents in Microsoft Word. After submission, the letter was rejected by the Clerk of Court for failure to comply with Federal Rule of Appellate Procedure (FRAP) 32 and NCR 32-3. The Clerk sent an e-mail to counsel for Ralphs with a set of specific instructions for how to bring the filing into conformity with the applicable Rules. The e-mail specifically directed that counsel “not make any changes (including dates) other than those requested below.”

Ralphs’ original brief did not comply with FRAP 32 and NCR 32-3 because Ralphs’ reasonably concluded that FRAP 32 and NCR 32-3 do not apply to letter

briefs. This conclusion was necessitated because letters are not traditionally formatted in the manner of any other brief or paper filed with the Court. For example, both Rules 32 and 32-3 require that a brief be double spaced, that it include a cover page or a caption containing the information traditionally included on a cover page, and that the brief be physically bound. Rule 32-3 also provides that the length of a brief is determined by dividing the word count of the brief by 280, a rule clearly intended to apply to papers that are double spaced, though letters are traditionally single spaced. Fundamentally, the apparent purpose of requesting letter briefs, as opposed to any other form of brief, is precisely so as to avoid nuanced formalities. Having reasonably concluded that the formatting rules for briefs do not apply to letters, Ralphs submitted its letter brief in conformity with normal conventions for drafting a letter and used the default settings imposed by Microsoft Word.

In order to comply with the Clerk's instructions, Ralphs has reformatted the brief. By increasing the font size, however, the brief now exceeds three pages. Unfortunately, because the Clerk specifically instructed Ralphs not to make changes other than those identified by the Clerk, Ralphs is unable to reduce the length of the brief without making substantive changes to the text itself. Because the application of the formatting rules to letter briefs is uncertain, and because Ralphs cannot simultaneously comply with both the Clerk's instructions and the

Court's original order regarding page limits, Ralphs respectfully requests that it be permitted to exceed the page limit by a single page.

Inclusion of this additional page is justified by the complex issues presented by the Court's request to address *Gordon*. A three-page limitation is extremely restrictive and is barely enough space to clearly discuss both the flaws in *Gordon*'s reasoning and to identify the distinctions between this case and that one. As the attached letter brief demonstrates, there are potentially grievous errors in *Gordon*'s reasoning that warrant serious reconsideration of its holding. The current length of Ralphs' letter brief reflects the diligent efforts of Ralphs' counsel to condense its arguments as much as possible. Further reductions would require the omission of key points that merit this Court's review. For these additional reasons, the Court should grant Ralphs' request to exceed the page limit.

If the Court does not grant this motion, Ralphs respectfully requests an order clarifying how the formatting rules apply to letter briefs and for leave to revise its letter brief to conform to the page limitations imposed by the August 17 order.

Dated: September 19, 2016

Respectfully submitted,

MORRISON & FOERSTER LLP

By: /s/ Timothy F. Ryan
TIMOTHY F. RYAN
Attorneys for Respondent
Ralphs Grocery Company

9th Circuit Case Number(s)

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